SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1968
No. 609

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,
Appellant,

vs.

CITY OF LOS ANGELES, a municipal corporation, and DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,
Appellees.

On Appeal From the Court of Appeal of the State of California, Second Appellate District.

Opposition to Motion to Dismiss or Affirm.

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OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

Nothing in appellees' motion undermines the fact that AB 9, applying only to a single specified past event, creates a new cause of action in one party and subjects others to that new cause of action, contrary to the law applying to all other persons in California who might be similarly situated.

Under the general law, appellant is not liable for contribution unless sued by the injured claimant and adjudged liable in that suit. AB 9 creates, and subjects appellant to, a new cause of action for contribution (relating specifically and only to the past Baldwin Hills

accident) at the instance of an admittedly liable tort feasor. Under AB 9 appellees, rather than the victims, select the parties whom they (the appellees) claim to be liable, and in this way may affect the amount of contribution from any other party subsequently found to be jointly or severally liable. Also, appellees alone might determine the extent of damages through the settlement they negotiate with each injured party.

Appellees' assertions (*e.g.*, Motion, pp. 3, 5) that the privileges of AB 9 were equally available to appellant are specious. Since the privileges accorded by that statute required confession of liability as a tort feasor, these privileges were, as a practical matter, limited to appellees just as if AB 9 had specifically identified them and them alone. Thus the privileges were limited not only to one particular past accident, but also to one willing to admit liability for that accident.

Appellees' efforts to justify AB 9 as "disaster relief" do not cure constitutional infirmity. Such statements regarding disaster relief could be made with respect to any statute singling out a particular past accident for the creation of a new and discriminatory right of action.*

The lack of support for appellees' position appears from appellees' reliance on (1) authorities approving post-event changes of procedure made generally applicable (Motion, pp. 5-6), and (2) authorities approving different laws in different areas, though operating alike upon all persons within the specified areas (Motion, pp. 8-9). The case at bar is unlike either.

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*Description of AB 9 as "disaster relief" serves only to confuse. "Disaster relief" is a term normally applied to the extension of monetary or other relief from the public treasury and not to the exceptional adjustment of the rights and liabilities of private parties.

In *Augustus v. Bean* (1961), 56 Cal. 2d 270, 363 P. 2d 873 (Motion, pp. 5-6), the statute was of general application both prospectively and retrospectively hence no equal protection question was involved. Such is not the situation here. AB 9 violates the Constitution not because the failure of appellees' dam antedated its enactment but because it retrospectively conferred a special cause of action on appellees (with all attendant practical benefits—see Juris. State., pp. 13-14) and withdrew correlative immunities from appellant, a discriminatory exception to the general law governing all other past and future tort situations.

Appellees' other authorities similarly illustrate essential differences from the case at bar. Thus, in *Denver & R.G.W.R. Co. v. Trainmen* (1967), 387 U.S. 556, and *Ex Parte Collett* (1949), 337 U.S. 55, the respective majorities of the Court simply upheld a legislative addition to permissible venue. In *Chase Securities Corp. v. Donaldson* (1945), 325 U.S. 304, the Court held that legislative change of statutes of limitation affecting procedural remedies, where lapse of time had not vested a party with title to real or personal property, was not *per se* an offense against the Fourteenth Amendment. No like or analogous question appears in the case at bar.

Nor does AB 9 apply its discrimination along area lines. It does not mark off a specific county for its separate legislative treatment, as in *South Carolina v. Katzenbach* (1966), 383 U.S. 301, or several counties as in *Salsburg v. Maryland* (1954), 346 U.S. 545; nor does it deal with limitation of the practice of a profession in retail stores, as in *Williamson v. Lee Optical Co.* (1955), 348 U.S. 483 (general statute proscribing occupancy of space in retail stores by persons engaged in eye examination or visual care).

Contrary to the decisions cited in the Jurisdictional Statement and unsupported by any decisions cited in appellees' motion, the decision below sustains an extraordinary and obviously discriminatory statute which confers privileges and withdraws immunities as respects a single past accident, in contrast to the rights, privileges and immunities of all persons similarly situated with respect to any other accident, great or small, past or future.

Clearly the question is substantial.

The motion to dismiss or affirm should be denied.

Respectfully submitted,

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